HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No. 22221 OF 2006

-

Between:

G. Rama Moorthy

..... Petitioner

AND

Election Commission of India,
New Delhi & another

.....Respondents

:: O R D E R ::

Counsel for the petitioner : Shri A. Ramalingeswara Rao

Counsel for respondent No.1 : Shri C.P. Sarathy

Counsel for respondent No.2 : Government Pleader for
General Administration

31st October, 2006.

Per G.S.SINGHVI, C.J.

The petitioner, who retired as Superintendent (Accounts Branch) from the office of the Director of Printing and Stationery, Hyderabad and is desirous of contesting election for membership of the Andhra Pradesh Legislative Council (for short, 'the Council') from the Graduates' Constituency of Mahabubnagar, Ranga Reddy and Hyderabad Districts, has filed this petition for quashing paragraph 4 of the guidelines issued by Election Commission of India (respondent No.1). He has further prayed for issue of a direction to the respondents to accept the applications of the graduate employees in bulk from any Gazetted Head of Office, Statutory Body, Corporation or Public Undertaking and recognized professional bodies as is done in the case of teachers. Still further, he has prayed for issue of a direction to respondent No.2 to accept the copies of degrees etc. certified by the Gazetted Officers.

The complaint of the petitioner is that in view of the guidelines issued by respondent No.1, the concerned authorities are not accepting the certified copies of the degrees and are demanding original; that bulk applications sent by the Heads of the Institutions have been accepted for enrolment of voters of the teachers' constituencies, but similar action has not been taken in respect of the prospective voters of other constituencies and, in this manner, the members of the Graduates' Constituency are being discriminated.

In the counter-affidavit filed by him, Shri V. Bhaskar, Chief Electoral Officer and Ex-Officio Principal Secretary to Government, General Administration (Elections-E) Department, has detailed out the procedure for enrolment of voters and denied that any discrimination is being practised against those seeking enrolment for Graduates' Constituency. In paragraph 7 of his affidavit, Shri Bhaskar has

averred as under:

> "7. The graduate is given a number of options to prove his eligibility of which production of original diploma is only one. Personal appearance is required only if the photo copy of diploma/marks sheet is submitted. If the other options are availed i.e. enclosing certificate from head of the office based on entries in Government records or Certificate of entry in record of statutory bodies, corporations or public undertakings etc., the personal appearance is not required. Personal appearance is not mandatory in case the individual follows the other options provided at para 4 (iii)(b), (c) & (d) of Election Commission of India guidelines which are extracted at Para 5 of the counter affidavit."

In paragraph 13, he has denied that bulk applications were accepted from the voters of the Teachers' Constituency. According to him, the only concession made in the case of Teachers is that Heads of Institutions can forward the applications in bulk with a certificate that the teachers concerned have worked in the educational institution for a period of three years in preceding six years.

We have heard learned counsel for the parties. Article 171 of the Constitution contains provisions relating to composition of the Legislative Council. Clause (1) thereof declares that the total number of members in the Legislative Council of a State shall not exceed one-third of the total number of members in the Legislative Assembly of that State. In terms of Clause (3)(a) of Article 171, approximately one-third members of the Council are required to be elected by electorates consisting of members of Municipalities, District Boards and other Local Authorities, which may be specified by Parliamentary legislation. Sub-clause (b) of Clause (3) lays down that approximately one-twelfth members of the Council shall be elected by electorates consisting of persons residing in the State, who have been for at least

three years graduates of any University in the territory of India or have been for at least three years in possession of qualifications prescribed by or under any law made by the Parliament as equivalent to that of a graduate of any such University. Sub-clause (c) of Clause (3) lays down that approximately one-twelfth members of the Council shall be elected by electorates consisting of persons who have been for at least three years engaged in teaching in educational institutions within the State, not lower in standard than that of a secondary school. In terms of sub-clause (d) of Clause (3), approximately one-third of members of the Council are to be elected members of Legislative Assembly from amongst the persons who are not members of Assembly. The remaining members of the Council are to be nominated by the Governor in accordance with Clause (5). Clause (4) of Article 171 requires that the members to be elected under sub-clauses (a), (b) and (c) of Clause (3) shall be chosen from the territorial constituency prescribed by or under any law enacted by the Parliament. Election of such members is to be held in accordance with the system of proportional representation by means of a single transferable vote.

Part III of the Representation of the People Act, 1950 (for short, 'the 1950 Act') contains provisions for preparation of electoral rolls for Assembly Constituencies and Part IV contains provisions relating to electoral rolls of Council Constituencies. Clause (e) of Section 27(2), which finds place in Part IV of the 1950 Act, lays down that for the purpose of elections to the Legislative Council of a State in any 'Local Authorities' Constituency, the provisions of Sections 15, 16, 18, 22 and 23 shall apply. Likewise, sub-section (4) of Section 27 declares that the provisions of those Sections and Section 21 shall apply in relation to Graduates' Constituencies and Teachers' Constituencies. Sub-section (3) of Section 27 lays down that the State Government may,

with the concurrence of the Election Commission, specify the qualifications, which shall be deemed to be equivalent to that of a graduate of a University and the educational institutions within the State, which are not lower in standard than that of a secondary school. Section 15 of the 1950 Act lays down that for every constituency there shall be an electoral roll prepared in accordance with the provisions of the Act under the superintendence, direction and control of the Election Commission. Section 16 specifies disqualifications for registration in an electoral roll. Sections 17 and 18 lay down that no person shall be entitled to be registered in the electoral roll for more than one constituency and for any constituency more than once. Section 21 lays down the procedure for preparation and revision of electoral rolls, Section 22 lays down the procedure for correction of entries in the electoral rolls and Section 23 provides for inclusion of names in electoral rolls.

For the purpose of holding election to the Council, which was revived by the Andhra Pradesh Legislative Council Act, 2005, Election Commission of India (respondent No.1), vide its communication dated 27-9-2006 addressed to the Chief Electoral Officer of Andhra Pradesh (respondent No.2 herein) conveyed the guidelines for preparation of electoral rolls of the Council from its Graduates' and Teachers' Constituencies. Paragraph 2 and extracts of paragraphs 4 and 5 of the guidelines issued by respondent No.1, which have bearing on the decision of this petition, read as under:

> "2. The revision of electoral roll of the concerned Graduates' and Teachers' Constituencies shall be undertaken with reference to 1st November 2006 as the qualifying date in accordance with the following programme –

S.No.	Activities	Period/Date

1.	Issue of public notice under Rule 31(3) of the Registration of Electors Rules, 1960.	29.09.2006(Friday)
2.	First republication of notice in Newspapers under Rule 31(4)	16.10.2006(Monday)
3.	Second republication of notice in Newspapers under Rule 31(4)	24.10.2006(Tuesday)
4.	Last date of receipt of applications in Form 18 or Form 19 as the case may be	06.11.2006(Monday)
5.	Period for the preparation of manuscripts and printing of draft roll	20.11.2006(Monday)
6.	Draft publication of electoral rolls	22.11.2006(Wednesday)
7.	Period for filing claims and objections	22.11.2006(Wednesday)
8.	Date by which the claims and objections shall be disposed of and supplements be prepared and printed	27.12.2006(Wednesday)
9.	Final publication of electoral rolls	29.12.2006(Friday)

4. Procedure for enumeration for Graduates' Constituencies:-

(i) The Chief Electoral Officer should supply the updated list of qualifications equivalent to that of a Graduate specified by the State Government concerned for voters in the Graduates' constituencies of the respective EROs.

(ii) The eligibility of a person for enrolment in a Graduates' Constituency is to be determined having regard to provisions of Article 171 (3)(a) of the Constitution and Sections 27(3)(a), 27(5) (a) and 27(6) of the R.P. Act, 1950. Accordingly, a person who has been, for at least three years before the qualifying date (01.11.2006), a graduate of any University in the territory of India or has been in possession of equivalent qualifications prescribed in the list referred to in sub-para (i) above and is ordinarily resident of the constituency is entitled to be registered as an elector in a Graduates' Constituency.

(v) Every person making an application in Form 18 shall be required to furnish his degree or certificate or mark sheet, in

original, in support of his eligibility as per the following procedure:-

(a) In cases where the applicant directly submits his application in person before the Designated Officer duly appointed for the purpose, he will produce the original degree/certificate/mark sheet before the Designated Officer. The Designated Officer will scrutinize the degree/certificate/ mark sheet and after satisfying himself record either "Verified with original and found correct" or "Verified with original and found not correct – Rejected". The Designated Officer will then affix his signature, full name and PIN number on the application as mark of a summary enquiry and retain a photocopy (only attested by him) of the original document furnished by the applicant and forward the application to the ERO.

(b) In cases where the application is sent by Post to the ERO/ AERO along with attested copies of the degree/ certificate, the ERO will forward the same to the Sub-Divisional Officer (SDO), incharge of the area where the applicant stays. The SDO will, in turn, issue a notice to the applicant to appear either before him or a Designated Officer appointed for the purpose in the sub-division, in person, along with his original certificate. Such notice will be issued by registered post or hand-delivered with proper acknowledgement due. On the appointed day of the hearing, the applicant will produce his original certificates and the Designated Officer will then proceed with his enquiry as per sub-para (a) above and affix his decision as laid down therein. The application will then be forwarded after completion of the enquiry by the SDO to the ERO/AERO concerned.

5. Procedure for enumeration for Teachers' Constituencies:

(i) The eligibility of a person for enrolment in a Teachers' constituency is to be determined having regard to the provisions of Article 171(3) (c) of the Constitution and Sections 27(3)(b), 27(5)(b)and 27(6) of the Representation of the People Act, 1950. Accordingly, a person shall be entitled to be

registered as elector in a Teachers' Constituency, if (a) he has been engaged in teaching, within six years immediately before the qualifying date (1st November, 2006 in the present case), for a total period of three years, (b) he has been so engaged in teaching for the said period in any of educational institutions not lower in standard than that of secondary school, (c) such educational institutions not lower in standard than that of secondary school have been specified as such by the State Government, with the concurrence of the Election Commission, by notification in the official gazette, and (d) the person concerned is ordinarily resident within the territorial extent of the Teachers' Constituency in which he seeks enrolment.

(v) Every application in Form 19 by a person seeking enrolment in Teachers' Constituency shall be accompanied by a certificate from the Head of the educational institution certifying the engagement of the person concerned as a teacher for a total period of three years within the last preceding six years against a sanctioned post. The format for the certificate will be as follows:-

'CERTIFICATE'

This is to certify that Shri/Smt./Kum._____ has been teaching in _____(name of the institution) for a total period of three years within the last preceding six years, as shown below against a sanctioned post on regular/adhoc* basis.

2 (a) * As per the records of the Institution, he/she has been engaged in this institution continuously from_____ (date) to_____ (date)

OR

(b) As per the records of the institution, he/she has been engaged in this institution for the following period of services:-

From_____ to_____
From_____ to _____
From_____ to_____

(Signature, Name & Seal of the Head of Institution)

(*Strike out whichever is not applicable)

(vi) The certificate of the Head of the educational institution in the above format should be considered enough by the ERO to determine the eligibility of the applicant.
(vii) Applications in bulk whether submitted in person or by post, shall not be considered for inclusion by the ERO."

A reading of the guidelines reproduced above makes it clear that for being enrolled in a Graduates' Constituency, the applicant must have been, for at least three years before the qualifying date i.e., 01.11.2006, a graduate of any University in the territory of India or must possess equivalent qualification. He should also be ordinarily resident of the constituency. The applicant is required to submit application in Form No.18 and furnish his degree or mark sheet in original. If the applicant directly submits the application before the designated officer, then he must produce original/ certificate/mark sheet. After scrutiny thereof, the designated officer is required to make a note of verification or rejection thereof. Where the application is accepted, the designated officer is required to return the original after retaining photostat copy. If the application is sent by post, then the Electoral Registration Officer or Assistant Electoral Registration Officer is required to send the same to the concerned Sub-Divisional Officer. The latter is required to issue notice to the applicant to appear either before him or the designated officer along with the original certificates. After verifying the certificates, the concerned officer or the designated officer has to adopt the same procedure as is followed when the applicant appears in person. In case of Teachers' Constituencies, the application is required to be made in Form No.19. Such application must be accompanied by a certificate from the Head of the educational institution certifying the engagement of the person concerned as a teacher for a period of three years within the last

preceding six years against a sanctioned post.

There is nothing in the aforementioned guidelines from which it can be inferred that any discrimination has been practised between those seeking enrolment in the Graduates' Constituency vis-à-vis those seeking enrolment in the Teachers' Constituency. The ambiguity, if any, was clarified by the Election Commission vide its letter dated 7-10-2006 sent in response to D.O. letter dated 3-10-2006 of respondent No.2. The relevant extract of that letter reads as under:

> -
>
> -
>
> **"Issue No.2 Verification for Graduates Constituency**
>
> In the cases covered by para 4(iii)(b) of the Guidelines where the claim is supported by a copy of an entry in the Government record or a certificate issued to a Graduate employee by the Gazetted Head of Office on the basis of entries in Government records in his custody or a copy of an entry in the record of Statutory Bodies, Corporations or Public Undertakings specifying the degree, diploma or certificate possessed by the claimant duly attested by the Head of the Office concerned, further verification by the Designated Officer may be dispensed with. In other cases, where only the attested copies of the card of registration/certificate issued by the University/College and other institutions mentioned in para 4(iii) (c) & (d) are furnished by the applicant instead of the original certificates/registration cards, then the same are required to be verified by the Designated Officer."

The provision for submission of bulk applications by educational institutions was made only vide Memo dated 10-10-2006 issued by Government of Andhra Pradesh. Paragraph (x) of that memo reads as under:

> "**(x) Submission of bulk applications by Educational Institutions:**
>
> -

Educational Institutions can directly send Form 19 certifying the eligibility of the applicant. Each of these applications must be accompanied by a certificate from the head of the educational institution in the format prescribed by the Commission. Further, the application should be forwarded by the Head of the Educational Institutions through a forwarding letter signed personally by him along with the list of the applicants.

The applications in bulk cannot be accepted from any institution head other than an educational institution."

The aforementioned provision does not, in any manner, detract from paragraph 7 of the guidelines issued by the Election Commission, which clearly prohibit consideration of the applications made in bulk for inclusion in the electoral roll. Therefore, the grievance made by the petitioner that the members of the Graduates' Constituency have been discriminated cannot but be treated as un-substantiated. That apart, the petitioner has not produced any tangible evidence on the record of the writ petition to show that the respondents have accepted bulk applications sent by any particular educational institution and enrolled the applicants in the Teachers' Constituency without regard to the basic qualifications. Therefore, the complaint made by the petitioner that he has been discriminated is liable to be declared as illusory and the same cannot be entertained for passing an order which may impede the process initiated by the respondents for holding election to the Legislative Council.

With the above observations, the writ petition is dismissed.

As a sequel to dismissal of the writ petition, WPMP.No.28217 of 2006 filed by the petitioner for interim relief is also dismissed.

G.S.SINGHVI, C.J.

31st October, 2006.

C.V. NAGARJUNA REDDY, J.

ARS